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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Report on the situation of human rights in the Palestinian territories occupied since 1967, submitted by Mr. Giorgio Giacomelli, Special Rapporteur, pursuant to Commission on Human Rights resolution 1993/2 A

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Executive summary

The mandate of the Special Rapporteur was established by Commission on Human Rights resolution 1993/2 A of 19 February 1993, to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967 and to report to the Commission until the end of the Israeli occupation of those territories. The current Special Rapporteur, Mr. Giorgio Giacomelli (Italy), was appointed in December 1999 and this is his first report. The Special Rapporteur undertook a mission to the area where he held meetings in the West Bank, the Gaza Strip and Jerusalem with Palestinian and Israeli non-governmental organizations, international organizations on the ground, grass-roots and community organizations, individuals, and Palestinian Authority institutions. The Special Rapporteur regrets the lack of cooperation by the Israeli authorities.

In light of the mandate, this report addresses the subject of military occupation and actions and omissions of the Occupying Power limited to the duration of the occupation. In the occupied Palestinian territories, Israel bears the responsibilities of Occupying Power, as the Commission reaffirmed in resolution 1993/2. Obligations of international humanitarian law applying to Israel, its covenanted human rights obligations and those arising from customary law and general principles of international law constitute the framework for the investigation that has led to the present report.

The majority of refugees displaced as a result of the 1948 war, those from the West Bank, the Gaza Strip and Jerusalem displaced in the war of 1967, and refugees from Gaza and elsewhere during and after the hostilities of October 1973 still live in 30 camps created after the 1948 war (8 in Gaza and 22 in the West Bank, including Jerusalem). Currently, at least 1,353,547 Palestinian registered refugees and other holders of the right of return (as well as to compensation and/or restitution) reside in the territories that are the subject of this mandate. Israel bears the primary responsibility for the implementation of the right of return.

Population transfer constitutes a particularly grave violation of human rights and humanitarian law and violates the long-established public international law principle of the unacceptability of the acquisition of territory by force, as well as specific resolutions concerning Israel's confiscation of land and settlement activities. Since 1967, Israel has confiscated an estimated 60 per cent of the West Bank, 33 per cent of the Gaza Strip, and approximately 33 per cent of the Palestinian land area in Jerusalem for public, semi-public and private use in order to create Israeli military zones, settlements, industrial areas, elaborate "by-pass" roads, and quarries, as well as to hold "State land" for exclusive Israeli use. Israel presently maintains 19 settlements in Gaza, 158 in the West Bank and at least 16 in occupied Jerusalem. In 1999 alone, Israel established 44 new settlement outposts in the West Bank.

Israeli occupation forces frequently carry out punitive and violent demolitions of Palestinian homes for lack of permit as well as forcible evictions of entire villages. Since 1987, 16,700 Palestinians (including 7,300 children) have lost their homes in this way. In 1999, Israel demolished 31 Palestinian homes in East Jerusalem and 50 in the West Bank, the latter in Area C. Another 28,000 remain under threat. Israeli occupation practices also affect the natural

environment of the occupied Palestinian territories, including degradation of the infrastructure, land confiscation, water depletion, uprooting of trees, dumping of toxic waste and other pollution.

Torture is absolutely forbidden, both under international human rights and humanitarian law, and freedom from torture is a non-derogable right. Although Israel ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1991, the Israeli General Security Service (GSS) has used torture systematically during the interrogation of Palestinians suspected of security offences. The United Nations Committee against Torture has determined that this amounts to a breach of the Convention against Torture, deemed them "completely unacceptable", and determined that it should cease immediately. On 6 September 1999, Israel's High Court of Justice issued a unanimous decision that ruled that the GSS violent interrogation techniques against Palestinian detainees were illegal, but refrained from defining them as torture and advised that such practices might be acceptable if specifically authorized by new legislation. The Court also indicated that GSS interrogators who would use these methods in extreme circumstances might not be criminally liable as they would be able to rely on the defence of necessity.

After the withdrawal and redeployment of the Israeli army from the major Palestinian cities in the West Bank in 1995, all Palestinian political prisoners were transferred from the occupied territories to Israel, in violation of article 76 of the Fourth Geneva Convention. Although there have been releases under the implementation of the peace agreements, the number of prisoners remains high, standing currently at about 1,500. The practice of administrative detention, without charges or trial, whereby orders can be renewed indefinitely for six-month periods, has continued. There has been a reduction in the number of administrative detainees, who currently number 13. The conditions of detention are said to be below international standards and difficulties of access to prisoners are faced by their lawyers and families.

The occupation, including the complete dependence of the Palestinian economy on Israel, lack of infrastructure, measures of collective punishment such as closures and house demolitions have caused the disruption of the fabric of society, with particularly serious effects on the family, which is a fundamental social support resource in Palestinian society. Palestinian children have suffered considerably as a result of the Israeli occupation and more than 90 per cent have experienced multiple traumatic events in their lives. Attention should be drawn to the situation of Palestinian juveniles (aged between 14 and 17) imprisoned in Israel, in contravention of article 76 of the Fourth Geneva Convention. Four Palestinian children were killed in 1999, 102 children were injured, 82 by Israeli soldiers, 19 by settlers and 1 by both.

The enjoyment of fundamental human rights and freedoms by the population of the occupied Palestinian territories is severely curtailed by measures such as closures, which separate parts of the occupied territories, including East Jerusalem, from each other as well as from Israel and which have been imposed systematically since 1993. The "Erez II" checkpoint under construction near Bethlehem will de facto completely separate the northern from the southern part of the West Bank, a situation compounded by permit requirements for non-resident Palestinians to enter Jerusalem. Closures have severely curtailed the freedom of movement,

regulated through the policy of permits and magnetic cards, education and religion of the population of the occupied territories. There does not seem, however, to be any specific interference with freedom of expression.

The city of Jerusalem, under Israeli military closure since 1993, represents a concentration of the range of human rights concerns and the combined consequences of the Israeli occupation. Government's discriminatory treatment of Palestinians affect all aspects of life, as well as having dramatic ramifications on the demographic, historic and cultural nature of the city itself.

The economic dependence of the occupied territories on Israel affects all sectors, in particular owing to Israeli control of the movement of goods, trade, and especially the labour market, where Palestinian workers are discriminated against on the basis of their civil status and, on the pretext of security, receive disproportionately low wages, inferior benefits, and work under poor conditions. This has resulted in an estimated 10-15 per cent decrease in real per capita income for the population of the occupied territories from 1993 to 1999. There are currently some 50,000 Palestinian workers employed daily in Israel. Another category of workers affected are fishermen in the Gaza Strip who are exposed to attacks and harassment by Israeli navy patrols, as well as destruction of their nets.

The Special Rapporteur notes that violations acquire special gravity and meaning when taken into consideration in their composite form. Just as some of the above-mentioned violations tend to accumulate such that, each day that they are not dealt with, their consequences increase in gravity and effect, they also assume other dimensions and beget ancillary human rights consequences. The Special Rapporteur recognizes that the purpose of protection enshrined in humanitarian law, in particular in the Hague Regulations and the Fourth Geneva Convention, until today has not been served. In general, the recommendation of the Special Rapporteur cannot be but that of a rigorous implementation of the letter and spirit of the relevant international norms, which implies the reversal of illegal trends, correction and, where appropriate, restitution.

Introduction

1 At its forty-ninth session, the Commission on Human Rights adopted resolution 1993/2 A of 19 February 1993, in which it decided to appoint a special rapporteur with the following mandate

"(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967,

"(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate,

"(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories."

2 The former Special Rapporteurs, Mr. René Felber (Switzerland) and Mr. Hannu Halinen (Finland), presented reports to the Commission from its fiftieth to its fifty-fifth sessions (E/CN.4/1994/14, E/CN.4/1995/19, E/CN.4/1996/18, E/CN.4/1997/16, E/CN.4/1998/17 and E/CN.4/1999/24, respectively). The current Special Rapporteur, Mr. Giorgio Giacomelli (Italy), was appointed in December 1999 by the Chairperson of the Commission on Human Rights.

3 Prior to presenting his report to the Commission on Human Rights at its fifty-sixth session, the Special Rapporteur undertook a mission to the area where he held meetings with a wide range of interlocutors in connection with his mandate. This included meetings with Palestinian and Israeli NGOs, international organizations on the ground, grass-roots and community organizations, individuals and Palestinian Authority institutions. Information was gathered through eyewitness observation, oral testimony, and documentation from a wide variety of sources. On this mission, the Special Rapporteur met with these interlocutors in the West Bank, the Gaza Strip and Jerusalem.

4 The Special Rapporteur regrets the lack of cooperation by the Israeli authorities. As was previously brought to the Commission's attention, Israel rejects the mandate claiming that, since its establishment, a new situation prevails and violations are committed by other parties. While the Special Rapporteur has to limit his inquiry to the scope of the mandate, he is nonetheless aware of allegations and violations peripheral to his mandate related to actions or omissions by Israel in other areas, and by the Palestinian Authority (PA). However, in light of the mandate, this report addresses the subject of military occupation, and actions and omissions of the Occupying Power limited in time to the duration of the occupation.

I. JURISDICTION

5 Under the Charter of the United Nations, a Member State is obligated to "respect and promote human rights". Additionally, Israel is constitutionally bound by the terms of the "Partition of Palestine" resolution of the General Assembly, 181 (II), which states in Part I, chapter 2, paragraph 3: "All persons within the jurisdiction of the [Arab or Jewish] State shall be

entitled to equal protection of the laws." Israel bears an obligation to respect, promote and fulfil human rights, arising from its ratification of the various human rights and humanitarian law treaties. In the occupied Palestinian territories, Israel bears the responsibilities of Occupying Power, as the Commission on Human Rights in its resolution 1993/2 reaffirmed.

6. United Nations human rights treaty bodies have established that the responsibility and obligation to observe human rights, especially upon a ratifying State, encompasses the State jurisdiction even when such jurisdiction exceeds the State's entitled territory, whether such territories are occupied, administered or overseen in any other form. This position has been reaffirmed in the case of treaty bodies reviewing Israel's covenanted obligations.

7. In the occupied territories, with the exception of Jerusalem, Israel variously has shared the "personal", "functional" and "geographical" elements of jurisdiction with the Palestinian (National) Authority during the interim period and up to today, in a patchwork of Areas "A", "B" and "C" as defined by agreement of the parties in the Oslo process. However, in all these areas Israel continues to exert control over the movement of people and goods between and among jurisdictional areas and the external borders. As a matter of agreement with the Palestinian representatives, Israel also claims the right to enter all areas for purposes of security.

8. Therefore, throughout this review period, international humanitarian law obligations apply to Israel, as well as its covenanted human rights obligations and those arising from customary law and general principles of international law. These norms and instruments constitute the framework for the investigation that has led to the present report.

9. It is noted that the humanitarian law instruments (notably the Hague Regulations Respecting the Laws and Customs of War on Land of 1907, art. 43) prohibits an Occupying Power from imposing its own legal system in an occupied zone and/or subjecting the occupied civilian population to its domestic laws. In the case under review, despite these prohibitions, the Occupying Power has supplanted its domestic legal regime in occupied Jerusalem by an act of Knesset in 1981. In the other occupied zones, Israel selectively has replaced existing laws with its own domestic laws and military orders. This violation of international law includes Israel's application of its municipal law to its citizens and Israeli institutions settling in the occupied territories.

II. PRINCIPAL CONCERNS REGARDING HUMAN RIGHTS

A. The right of return

10. The plight of Palestinian refugees in these territories has remained a concern throughout the period of occupation. Most of these refugees were made homeless as a consequence of the war of 1948, as well as the simultaneous and subsequent confiscation of their land, properties and homes, and large-scale demolition of their villages by Israel. Currently, at least 1,353,547 Palestinian registered refugees and other holders of the right of return (as well as to compensation and/or restitution) reside in the territories subject to this mandate. The Special Rapporteur notes that the duty holder, in the case of this right, is also the Occupying Power and bears the main responsibility for the return of persons residing in the occupied Palestinian territories, displaced as a result of the 1948 war, those from the West Bank, the Gaza Strip and

Jerusalem displaced in the war of 1967, and refugees from Gaza and elsewhere during and after the hostilities of October 1973. The majority of these refugees still live in 30 camps created after the 1948 war (8 in Gaza and 22 in the West Bank, including Jerusalem).

11. The continuing violation of the right of return emerged as a special concern during the Special Rapporteur's visit. It is his observation that it is increasingly a subject of both popular and political discourse, including in the form of opinion polls, editorials and petitions, reinforcing the claim to this right. Refugees feel that they are the subjects of continuing violation while kept in limbo for political reasons. Although the international community continues to provide services for Palestinian refugees, they note that there is a lack of adequate protection because they do not fall under the Convention relating to the Status of Refugees of 1951. Israel bears the primary responsibility for the implementation of the right of return, but has not demonstrated willingness to implement it. However, it should be noted that the plight of the Palestinian refugees has become the subject of discourse in certain Israeli political and civil society quarters. For instance, although he did not acknowledge responsibility, in an October 1999 speech to the Knesset Prime Minister Barak expressed regret for the suffering of the Palestinian people, including refugees.

12. It is observed, in particular, that the violation of this right grew greater during this review period - as with every passing year - and as the number of right holders grows, the values of their potential compensation and restitution claims increase, and the political and logistical aspects of the task become more complex and difficult.

B. Land and population transfer

13. It should be recalled that population transfer, as manifest in cases of the past decade, constitutes a particularly grave violation of human rights and humanitarian law. In this connection, the Special Rapporteur notes the increase in forced eviction of Palestinians and the implantation of Israeli settlers in the territories under review.

14. The Occupying Power's confiscation of land and properties belonging privately and collectively to the Palestinians in the occupied Palestinian territories is a dominant feature of the occupation and an essential component of population transfer carried out by Israel. This practice violates the long-established international law principle of the unacceptability of the acquisition of territory by force, as well as specific resolutions concerning Israel's confiscation of land and settlement activities. Since 1967, Israel has confiscated land for public, semi-public and private use in order to create Israeli military zones, settlements, industrial areas, elaborate "by-pass" roads, and quarries, as well as to hold "State land" for exclusive Israeli use. Estimates place the proportion of Palestinian land confiscated by Israel at some 60 per cent of the West Bank, 33 per cent of the Gaza Strip, and at least 32.5 km^2, or approximately 33 per cent of the Palestinian land area in Jerusalem.

15. In the occupied Palestinian territories, planning since 1967 has been assumed by the military authorities and, for instance, continues to be carried out for Areas B and C in the West Bank by the civil Israeli administration based in the settlement of Bayt El. This practice is

in violation of article 43 of the Hague Regulations which, as noted above, prohibit an Occupying Power from altering the legal system in occupied territories. Israeli domestic laws, including Basic Laws, military orders and planning regulations, are applied with discrimination against and disadvantage to the Palestinian population.

16. Israeli authorities impose their own physical planning regime and master plans on villages, towns and rural areas, thereby restricting Palestinian living areas. For example, 1994 Israeli master plans - announced two years later - created six quarries on West Bank land. In 1999 alone, Israel established 44 new settlement outposts in the West Bank, on a combined land area of 9,953 dunums (2,488 acres). During the same year, Israeli planning authorities approved 14 new by-pass roads in the West Bank and Jerusalem which call for the confiscation of another 10,129 dunums (2,532 acres) of Palestinian land.

17. While applying very tight restrictions and granting very few permissions to build, Israeli occupation forces frequently carry out punitive and violent demolitions of Palestinian homes for lack of permit. Interlocutors reported the myriad difficulties and discriminatory practices that Palestinians face in obtaining building permits and information about imposed master plans. Sometimes punishment for infractions is retroactive to the establishment or public disclosure of a master plan. Since 1987, 16,700 Palestinians (including 7,300 children) have lost their homes in this way.

18. Israel's demolition of Palestinian homes in the West Bank and East Jerusalem has not fallen since 1993. In fact, although the area and number of Palestinians living under direct Israel civilian control are smaller, the average yearly demolition of Palestinian homes showed an increase throughout 1995-1999. In 1999, Israel demolished 31 Palestinian homes in East Jerusalem and 50 in the West Bank, the latter in Area C. Another 28,000 homes remain under threat.

19. Israel continues to evict entire Palestinian villages under a variety of pretexts. For the stated reason that they were living in a closed military zone, some 600 indigenous villagers in the eastern Hebron District (West Bank) were forcibly evicted under Israeli military order and their belongings were confiscated by Israeli forces in September and October 1999. Settlers in the area are currently using the now-homeless villagers' lands. During the Special Rapporteur's visit to the occupied territories, Israeli forces evicted and dispossessed a further 19 families in the same area.

20. In Gaza, at present Israel maintains 19 settlements that occupy 23,000 dunums of confiscated land, surrounded by an additional 23,000 dunums of confiscated land. In the West Bank, Israel maintains 158 settlements, while settlements in occupied Jerusalem number at least 16. All of these settlement implantations violate, in particular, article 49 of the Fourth Geneva Convention, as well as other international law norms.

21. The Special Rapporteur witnessed the ongoing construction of some 6,500 housing units for the new Jabal Abu Ghunaym/Har Homa settlement on 2,056 dunums of confiscated Palestinian land, completing the settlement circle around occupied Jerusalem. He also visited areas of new construction in Gaza Strip settlements. Reflecting the current trend in settlement growth, in the second half of 1999 official tenders for settlement construction in the occupied

territories provided for 3,196 new units. The current Israeli Government approved the construction of a total of 5,752 new settlement units in 1999. Published reports indicate that the settler population in the West Bank and Gaza, now totalling 193,680, increased by 12.5 per cent in 1999 over the previous year. The settlers in Jerusalem increased in 1999 to a total of approximately 170,000.

C. Right to a safe and healthy environment

22. Occupation practices that affect the natural environment of the occupied territories include degradation of the infrastructure, land confiscation, water depletion, uprooting of trees, dumping of toxic waste and other pollution. This inherent right of the Palestinian people is also the subject of Israel's State obligations under, among others, the International Covenant on Economic, Social and Cultural Rights, which it ratified in 1991.

23. Palestinian entitlements for water include the underground water of the West Bank and Gaza aquifers, in addition to their rightful shares in the waters of the Jordan River as riparians. The annual renewable freshwater yield in the occupied territories ranges from 600 million cubic metres to 650 million cubic metres. The West Bank's hydrological system includes three major aquifers: the western, north-eastern and eastern basins.

24. The Palestinian use of the Jordan River before 1967 was through 140 pumping units. Israel either confiscated or destroyed all of those pumping units. In addition, Israel closed the large, irrigated areas of the Jordan Valley used by Palestinians, calling them military zones that later were transferred to Israeli settlers.

25. At present Israel extracts more than 85 per cent of the Palestinian water from the West Bank aquifers, which accounts for about 25 per cent of Israel's water use. As a result of Israeli restrictions, Palestinians currently use 246 million cubic metres of their water resources to supply nearly 3 million people in both the West Bank and Gaza Strip with their domestic, industrial and agricultural needs. This compares to Israel's use of 1,959 million cubic metres for its population of approximately 6 million. That reduces water consumption by Palestinians to 82 m^3 per capita, as compared with 340 m^3 for Israeli citizens and settlers.

26. Israel provides settlers with a continuous and plentiful water supply, largely from Palestinian water resources. The supply to Palestinians is intermittent, especially during summer months, as was the case in 1999.

27. Israeli settlements in the West Bank and Jerusalem are typically placed on high ground. Wastewater from many settlements is collected and discharged to the nearby valleys without treatment. The Special Rapporteur observed that Kfar Darom Israeli settlement in the Gaza Strip releases its sewage and chemical waste left from the industrial plants to the Palestinian Al-Saqa Valley in the central part of the Gaza Strip.

28. Israelis dump solid waste without restriction on Palestinian land, fields, and side roads. The solid waste generated in West Jerusalem, for example, is transferred to an unsanitary dumping site east of Abu Dis. That site in the West Bank overlays the infiltration area of the eastern sector of the water aquifer. Also, the settlements of Ariel, Innab, Homesh Alon Morieh,

Qarna Shamron, Kadumim and others dispose of their solid waste in the West Bank, as do military camps and settlements inside the "green line" (1948 border of Israel).

29. The Government of Israel has constructed at least seven industrial zones in the West Bank and two in Gaza. The West Bank zones occupy a total area of approximately 302 hectares. They are located mainly on hilltops, from which they dump industrial wastewater onto adjacent Palestinian lands. Information about industries in the Israeli industrial zones is not accessible to the Palestinians. Palestinian sources estimate that at least 200 Israeli factories operate in the West Bank. Some of the products are identifiable, but detailed information on quantities produced, labour, and waste generated is not available. Aluminium, leather-tanning, textile-dyeing, batteries, fibreglass, plastic, and chemicals are among the known industries within these settlements.

30. The Special Rapporteur visited the Barqan industrial zone, in the West Bank, which is a clear example of environmental pollution. Aluminium, fibreglass, plastics, electroplating and military industries are known to operate inside Barqan. The industrial wastewater that flows untreated to the nearby valley damages agricultural land belonging to the neighbouring Palestinian villages of Sarta, Kafr al-Dik, and Burqin, polluting the groundwater with heavy metals.

D. Torture

31. Torture is absolutely forbidden both under international human rights and humanitarian law and freedom from torture is a non-derogable right. Although Israel ratified the Convention against Torture in 1991, this is not part of Israeli domestic law and its provisions cannot be invoked in Israeli courts. The Israeli General Security Service (GSS) has used torture systematically during the interrogation of Palestinians suspected of security offences. The guidelines for interrogation were set by the Landau Commission of Inquiry in 1987, the second part of the guidelines are confidential and have never been published. Government regulation has allowed the head of GSS to authorize the use of "a moderate degree of pressure, including physical pressure" according to the Landau guidelines, in order to extract information from detainees. Methods and means, used alone or in combination, include position abuse, hooding, prolonged sleep deprivation and loud music, violent shaking, threats, including death threats, and chilling by cold air. The United Nations Committee against Torture determined that these methods amount to a breach of the Convention, deemed them "completely unacceptable" and in conflict with articles 1, 2 and 16 of the Convention, and determined that they should cease immediately.

32. On 6 September 1999, Israel's High Court of Justice issued a unanimous decision that ruled that the GSS violent interrogation techniques against Palestinian detainees were illegal. However, it refrained from defining them as torture and advised that such practices might be acceptable if specifically authorized by new legislation. The Court also indicated that GSS interrogators who would use these methods in extreme circumstances might not be criminally liable as they would be able to rely on the defence of necessity.

33. On 9 February 2000, the Israeli State Comptroller's 1995 report on GSS practices during the intifada was made public. It revealed large-scale use of torture by GSS interrogators,

systematic overstepping of the Landau guidelines and lying (to their superiors) about their compliance with them, and superiors not preventing the practice. On 15 February 2000, the head of GSS abandoned his demand for legislation of "special" interrogation methods in a meeting with the Prime Minister and senior Justice Ministry officials. However, in the meeting, the Israeli Attorney-General reiterated his promise to grant legal protection to any interrogator who uses "special means" in individual cases.

E. Prisoners, administrative detention, administration of justice

34. After the withdrawal and redeployment of the Israeli army from the major Palestinian towns in the West Bank in 1995, all Palestinian prisoners were transferred from the occupied territories to Israel, in violation of article 76 of the Fourth Geneva Convention. Although there have been releases of Palestinian (political) prisoners within the framework of the implementation of the peace agreements, their number remains high and currently stands at about 1,500. The provisions of the peace agreements relating to the release of Palestinian political prisoners have not been fully implemented by Israel. In this connection, it has to be noted that the situation of Palestinian security detainees from Jerusalem - some 52 - is particularly difficult since they are not included in the quota of prisoners to be released in the context of the implementation of the peace accords, although a few have been released recently. Several have spent more than 10 years in prison.

35. The conditions of detention are said to be below international standards with overcrowding, inadequate medical care, insufficient food rations, bad ventilation of cells, small cells, tear gas thrown into cells by the prison authorities during prisoners' protests, and with regard to the facility of access, by family and legal counsel and the frequency and duration of visits. Lately, lawyers have been prevented from seeing their clients for up to two or three months, which raises fears that torture is being used. Palestinian lawyers are also prevented from seeing their clients if they do not have a permit to enter Israel, in particular those from Gaza. Palestinian prisoners in Israeli prisons and detention centres can only be defended by lawyers who are members of the Israeli Bar Association. Families have difficulty in reaching their imprisoned relatives for lack of permit or owing to the distance from the prison. They are also subjected to harassment by the prison guards once they arrive. The policy of placing prisoners in isolation has continued during the period under review.

36. Administrative detention of Palestinian prisoners, without charges or trial, has been practised widely in Israel and detention orders can be renewed indefinitely for six-month periods. Some administrative detainees have spent more than five years in prison. Lately, there has been a reduction in the number of Palestinian administrative detainees who currently number 13. The problem of administrative detention sentences is compounded by the fact that the evidence placed before the judge at the military appeal committee is often declared confidential and is therefore inaccessible to both the defendant and the lawyer.

37. Double standards are applied in the administration of justice between Israelis and Palestinians on the basis of nationality; this is also reflected in the disparity in the sentencing pattern. For example, Israelis, mostly settlers, who kill Palestinians have received a maximum

sentence of seven years, but are sentenced more often to between four and six months of imprisonment, which institutionalizes impunity in the process. By contrast, Palestinians are sentenced to life imprisonment for killing Israelis.

F. Children, women and the family

38. Palestinian children have suffered considerably as a result of the Israeli occupation. According to mental health professionals, more than 90 per cent have experienced multiple traumatic events in their lives. This situation is aggravated by the fact that the occupation has also significantly affected an important Palestinian social support resource: the family structure. As an example, around 70 per cent of the children in the Gaza Strip have been exposed to four or five traumatic events such as tear-gas inhalation, night raids on the home, humiliation and/or beating of parents in front of them by Israeli forces and imprisonment. In addition to violence, measures of collective punishment undertaken by the Israeli authorities, such as house demolitions, have serious psychological effects on children.

39. Particular attention should be drawn to the situation of Palestinian juveniles imprisoned in Israel, in contravention of article 76 of the Fourth Geneva Convention. During 1999, there were 220 cases of arrest of Palestinian minors who were subsequently released. They were mostly in the 14-17 age group, their arrests were therefore in violation of the Convention on the Rights of the Child and other standards which set out a minimum age for imprisonment. In April 1999, the Israeli military commander for the middle area of the West Bank issued Military Order No. 132 which stipulates that children between 12 and 14 years of age can be arrested and does not define juveniles aged 16 as minors, although Israel considers persons up to the age of 16 as children. Although it is difficult to give the exact number of juvenile prisoners, it is currently estimated that there are some 75 Palestinian minors in the following prisons: 30 in Telmond (aged 12-16), 35 in Megiddo (aged 16-18), and approximately 10 in camps or interrogation centres. Eight juveniles, with very little of their sentences left to serve, were released after the signing of the Sharm el-Sheikh agreement. The overwhelming majority of the juveniles have been arrested on charges of stone-throwing and sentenced to periods usually ranging from one to six months. Children as young as 14 have had to sit outside in the rain at night blindfolded at the Beit El military investigation centre. The circumstances of these arrests and interrogations constitute serious violations of the Fourth Geneva Convention and the Convention on the Rights of the Child, as well as of international human rights conventions, to which Israel is a signatory. There are no military courts and no judges for minors.

40. Ten juveniles from Jerusalem arrested for political reasons were detained for some time in the section for criminal prisoners. Also, juveniles from the same family can be detained in different prisons. Family visits are limited to parents and brothers below the age of 16 and over 40 and they require a permit from the Israeli military authorities to visit. The visiting family members are searched and often harassed. Relatives who are not members of the prisoner's immediate family require two permits, which take months to be issued. Imprisoned Palestinian juveniles are allowed to pursue part of their education in prison but under unsatisfactory conditions. Conditions of detention include overcrowding, inadequate medical treatment and long delays in being treated by specialists and obtaining hospitalization for those who require it.

41. It should also be mentioned that 4 Palestinian children were killed in 1999, 102 children were injured, 82 by Israeli soldiers, 19 by settlers and 1 by both. Forty-seven were injured by rubber-coated steel bullets and 3 with live ammunition. Forty-four were subjected to beatings, 5 were run over by vehicles and 3 suffered from tear-gas inhalation.

42. Particular problems are also faced by children born to Arab parents in Jerusalem who often cannot be registered and issued birth certificates if their parents do not have the necessary residency status. It is estimated that there are approximately 10,000 unregistered children in Jerusalem who will not be entitled to receive an identity card when they reach the age of 16. Lack of residency status also deprives them of health and social insurance and the right to enrol in municipal schools.

43. The occupation, including the complete dependence of the Palestinian economy on Israel, lack of infrastructure, and measures of collective punishment such as closures and house demolitions have caused the disruption of the fabric of society, with particularly serious effects on the family, which is a fundamental social support in Palestinian society. In particular, harsh prison sentences that take fathers away from children and violence that often occurs after release affect the image and protective role of the breadwinner, resulting in mothers taking on an additional burden and acquiring roles other than the traditional ones.

G. Closures and the freedoms of movement, education, religion, expression and information

44. The enjoyment of fundamental human rights and freedoms by the population of the occupied Palestinian territories is severely curtailed by measures such as closures and the concomitant restriction of the freedom of movement that are imposed on the occupied territories by the Occupying Power in violation of articles 33 and 35 of the Fourth Geneva Convention, article 12 of the International Covenant on Civil and Political Rights and other international norms.

45. Closures began to be imposed systematically on the occupied territories as of 1993, with varying degrees of intensity, and have separated parts of the occupied territories, including East Jerusalem, from each other as well as from Israel. A permanent state of closure of the occupied territories is constantly in force and the movement of the population of the occupied territories is regulated through permits allowing them to access different parts of the territories. Stricter closures are imposed during Jewish holidays and in case of security incidents in Israel. On such occasions, access to Israel and movement between the occupied territories is blocked.

46. Movement is regulated through the policy of permits and magnetic cards, the latter being a requirement especially for the male inhabitants of Gaza and Palestinians working in Israel. Permits are also required for the use of the safe passage between the Gaza Strip and the West Bank. Since Israel has full control over the safe passage, numerous requests for its use have been refused. In addition to the above, an extremely serious recent development regarding the freedom of movement is the construction under way of the so-called "Erez II" checkpoint near Bethlehem which will de facto separate the northern part of the West Bank from the southern part. This is further compounded by the fact that non-resident Palestinians need a permit to enter Jerusalem.

47. The lack of appropriate educational infrastructure in the occupied territories and the Israeli policy of closures and permits have serious repercussions for students in the Gaza Strip. More than 1,300 students from Gaza are prevented from studying at universities and Palestinian institutions of higher education in the West Bank because Israel considers them to be a security risk. Some are not given permits if the father is "unsafe", which amounts to collective punishment. Some permits are denied for no apparent reason. On 16 January 1999, 272 permits were issued to students from Gaza with a validity of five to six months, and which can be withdrawn at random. Students who enter the West Bank "illegally" risk arrest, detention and deportation. There are currently some 400 Gazans enrolled in West Bank universities. In the West Bank, the Israeli army and settlers have raided educational institutions, exposing teachers and students to risks of harassment, ill-treatment and arrest. Given that the Israeli occupation forces control all international borders with the occupied territories, they often prevent Palestinian students from travelling to study abroad.

48. Inevitably, the tight control established by the Occupying Power through a variety of measures cannot but affect, albeit indirectly, other rights such as those to education and religion, although there seems not to be any specific interference with freedom of expression.

49. Freedom of information is curtailed by the Occupying Power principally through withholding of information, under specific circumstances, from the population of the occupied territories, in contravention of article 19 of the International Covenant on Civil and Political Rights. Palestinians are not sufficiently warned of or informed about measures which are adopted without adequate notice and publicity, particularly considering that they are in a language not understood by the population of the occupied territories (Hebrew). Proper announcements are not made, for example, concerning the altering of master plans of towns or villages, with regard to land confiscation, demolition orders and forced evictions.

H. Situation of Jerusalem

50. Particular mention deserves to be made of the case of East Jerusalem where violations continue to be particularly intense, and are implicitly of heightened relevance. The city, under Israeli military closure since 1993, represents a concentration of the range of human rights concerns cited above. The combined consequences of the Israeli occupation Government's discriminatory treatment of Palestinians affects all aspects of life, as well as having dramatic consequences on the demographic, historic and cultural character of the city itself.

51. Within the purview of this mandate, two aspects are unique to Palestinians of Jerusalem: the wholesale imposition of Israeli domestic law in the city, and the special discrimination practised by Israel's arbitrary denial and revocation of residency, which dismembers families. From 1967 to 1999, Israel cancelled the identity cards of 6,264 Palestinian Jerusalemites, affecting more than 25,000 people (including families). The intensification of this policy since 1996 has forced some 2,200-3,000 Palestinians to leave their city, or to live there "illegally". Despite official promises to halt this practice, Israel continued arbitrarily to revoke identity cards and residency permits. In fact, by Israeli law, Palestinian Jerusalemites are considered "visitors" in their home city, unless and until they agree to become Israeli citizens. Meanwhile, the 170,000 settlers who live in East Jerusalem now exceed in number the indigenous population.

52. Israel's annexation of occupied Jerusalem by a "Basic Law" in 1980 was determined by the Security Council and the General Assembly to be null and void. Therefore, the Fourth Geneva Convention, the Hague Regulations and other legal obligations on Israel continue to apply.

I. Workers and fishermen

53. The economic dependence of the occupied Palestinian territories on the Occupying Power affects all sectors, in particular by Israeli control over the movement of goods, trade, and especially the labour market. Simultaneously, Israel discriminates against Palestinian workers on the basis of their civil status and on the pretext of security. The combined effects are manifest in disproportionately low wages, poor working conditions, inferior benefits, such as social insurance, and denial of freedom of movement and the right to work.

54. Israel strictly and systematically controls the movement of Palestinian workers to Israel and abroad to a greater degree today, whereas previously movement has been relatively free even during tense and difficult times, such as during the intifada. The complex system of different permits provides the Occupying Power with very ample political and economic control over the flow of manpower. This pass/permit system adapts to the requirements of its security and economy without the onus of any contractual negotiation with the labour force, which finds itself at the mercy of the employer.

55. Such a situation has led to multiple violations and has resulted in an estimated decrease of 10-15 per cent in real per capita income for the population of the occupied territories during the period 1993-1999. It has also resulted in an ebb and flow of the number of workers absorbed by the Israeli market. The number of Palestinian workers currently employed in Israeli settlements and industrial zones is estimated at 50,000 daily. This represents a significant decrease compared with some 120,000 workers daily in 1992. It appears, however, that roughly as many workers, mostly from the West Bank, daily find their way into Israel unofficially, at their own risk. They represent a particularly vulnerable category, in particular with regard to denial of minimum wage and exposure to arbitrary decisions and harassment by employers.

56. A special group of workers is represented by some 2,600 Palestinians who earn their living by fishing and associated activities in the Gaza Strip. A complex zoning of the Gaza territorial waters makes it particularly difficult for fishermen to comply with rules, and limits the waters open to their activity to 12 nautical miles instead of the 20 miles agreed under the Oslo Accords. Even there, they are exposed to frequent harassment, ill-treatment, attacks and arrest by Israeli navy patrols, and occasional destruction of nets and equipment. During the review period, two fishermen were injured by Israeli navy gunfire on 10 April 1999.

J. Collective punishment

57. Many of the measures taken to enforce Israeli domestic law can be considered collective punishment. While this practice is prohibited by human rights and humanitarian norms, it remains a subject of concern for this Special Rapporteur. The constant military closure of Jerusalem, the West Bank and Gaza, to differing degrees, since 1993 constitutes a pattern of discrimination and denial of rights on a collective basis.

58. The discriminatory distribution of natural resources, such as land and water, has cumulative and collective consequences. Large-scale forced evictions, like the one cited during the Special Rapporteur's visit, are arbitrary actions constituting collective punishment directed at entire communities.

III. CONCLUSIONS AND RECOMMENDATIONS

59. The conclusions and recommendations of the Special Rapporteur are inspired by the conviction that international law should be respected not only for obvious juridical and ethical reasons, but in the very interest of the parties themselves. In fact, international law, and in particular human rights and humanitarian law, should be perceived as the very foundation of any just and lasting solution.

60. An encouraging, if yet embryonic factor is the awakening of civil society - across borders - to universal human rights values. The voice of the fast-growing number of NGOs active in the area of human rights should be listened to as the voice of the conscience of humanity. It is also worth noting that the rare respectable voices that have tried a non-biased interpretation of facts and to inspire more human attitudes - voices that until recently have been generally ignored when not angrily rejected - have begun to find some audience, inspire a less ideological reading of history, and hopefully encourage more objective attitudes and measures. However, in spite of these signs, which should be welcomed and supported, violations of human rights in the area covered by the mandate continue to give reason for concern.

61. Likewise, the Special Rapporteur welcomes and appreciates the good efforts of the human rights community as a whole, encompassing local, regional and international organizations, lawyers and individual activists, as well as United Nations human rights bodies, who collectively work towards goals and interests in common with this mandate.

62. The trend of the human rights situation in the occupied territories is not an easy one to read. While in fact in certain areas (such as in particular the numbers of prisoners, administrative detentions and casualties and the amount of land under complete Israeli control) violations appear to be statistically decreasing, such an impression must be measured against the new situation prevailing on the ground (delegation of certain functions to the Palestinian Authority, frequency and level of confrontations). At the same time violations such as population transfers, multiple restrictions of the freedom of movement, land confiscations, house demolitions, and expansion of the existing settlements and the establishment of new ones constitute negative indicators during the review period.

63. It is noteworthy that land confiscations and house demolitions have significantly increased in several areas, although they have been carried out over a smaller territory than in the past.

64. The Special Rapporteur takes note of the particularly severe plight faced by the Palestinian population of Jerusalem, which is subjected to a number of human rights violations such as confiscation of land and property, restriction of movement, denial of housing, arbitrary cancellation of residence status and population transfer through the expansion of settlements, which in combination produce a multiplier effect.

65. In the same vein, the Special Rapporteur notes that violations acquire special gravity and meaning when taken into consideration in their composite form. Just as some of the above-mentioned violations tend to accumulate such that, each day that they are not dealt with, their consequences increase in gravity and effect, they also assume other dimensions and beget ancillary human rights consequences. For instance, the combined effect of closure, land confiscation, house demolition, systematic expansion of settlements and by-pass roads and discrimination against workers, coupled with the resulting economic hardship have the disrupting consequence of isolating communities and rending the very fabric of society in the occupied territories reminiscent of the fragmentation reflected on the map.

66. Even in the case of certain measures that at first sight seem to be meant to improve the situation, such as the "safe passage", implementation based on very strict, lengthy, often humiliating procedures in fact runs the risk of institutionalizing a de facto closure and separation, thus contributing to the establishment of two superposed and intricate worlds, far from inspired by equality and based on a complex system of one-way osmosis.

67. Another area of violations - particularly odious insofar as it directly affects the physical and mental integrity of people - is that of the administration of justice, including treatment of prisoners, administrative detention and torture, where nothing short of full respect of international law can suffice. For instance, while in recent times Israel had adopted some measures to address the ongoing practice of torture, its Government has not identified its stand on the matter with clarity, nor has it unequivocally prohibited the practice of torture by law. Any ambiguity on this subject is an implicit violation of human rights law and, in particular, of the Convention against Torture, to which Israel is a party.

68. The Special Rapporteur recognizes that the purpose of protection enshrined in humanitarian law, in particular in the Hague Regulations and the Fourth Geneva Convention, until today has not been served. In this regard it has to be noted that while the principal responsibility lies with the Occupying Power, all the other High Contracting Parties also bear the responsibility to ensure respect. The Special Rapporteur therefore welcomes the General Assembly's initiative to implement the Fourth Geneva Convention and looks forward to the follow-up pledged by the High Contracting Parties at their Conference on 15 July 1999.

69. To this end, the Special Rapporteur wishes to acknowledge that there is a gamut of options available under the Convention to ensure respect through collective action, joint action, and bilateral measures. In fact, while the international community not only bears the positive obligation to ensure respect, it also has the obligation not to take any action through bilateral or regional arrangements, adopted for reasons of political or economic expediency, leading to violation of the relevant human rights and humanitarian norms.

70. The Special Rapporteur has observed that international monitoring and protection, where applied, can serve to defuse conflict, resolve tensions and assist good faith efforts on both sides. A model for this is the Temporary International Presence in Hebron (TIPH).

71. In general, the recommendation of the Special Rapporteur cannot be but that of a rigorous implementation of the letter and spirit of the relevant international norms, which implies the reversal of illegal trends, correction and, where appropriate, restitution.

72. While the very nature of human rights is in general not compatible with the concepts of selectivity or gradualness, in taking corrective action particular attention should be devoted to the situation of especially vulnerable segments of society such as women, children and the handicapped.

73. In certain types of violations, such as those related to natural resources, the environment and pollution, urgent measures should be adopted to avoid their becoming irreversible, keeping in mind that every day that they are not dealt with increases their gravity. In such cases, to avoid violations and apply a restitution ad integrum amounts to common sense and good public administration. A typical example is that of violations that affect the environment, the consequences of which will not affect just one people, but the entire region and beyond.

74. Likewise, violations such as those affecting freedom of movement, trade and work, which tend to strangle the already fragile Palestinian economy and, in fact, already have affected negatively the per capita income of the Palestinian population (especially in Gaza), augur an explosive economic and political situation that, if not checked, will affect the whole region.

75. One approach adopted by the Occupying Power that has led to multiple violations and serious negative effects is the imposition of its own legal system in the occupied territories (in contravention of article 43 of the Hague Regulations). A typical example is legislation relating to the development and physical planning of the territory. Such an approach, combined with a lack of transparency and publicity in carrying out, for instance, land confiscation, master plans, evictions and house demolitions, is causing undue suffering and loss. Therefore, planning of territory should be restored to the entitled people and corrective action should be undertaken to restore properties to their rightful owners. In this area in particular inspiration should be taken from laudable civil society actions, including joint Israeli-Palestinian efforts, to oppose and achieve restitution for demolitions and forced evictions.

76. The Special Rapporteur draws attention to the feelings generally expressed by the people he met in the occupied Palestinian territories, especially in areas where there is continuing and/or expanding encroachment of Israeli military occupation and settlements. There exists an apparently growing sense of hopelessness manifested, on the one hand, by passive discouragement and, on the other, by growing anger that is being directed not only against the Occupying Power, but also their own Palestinian Authority, and especially against the international community in connection with its inability to offer effective protection.

77. There seems to be a commensurate lack of confidence on the part of members of the Palestinian Authority, in particular among members of the Palestinian Legislative Council and non-governmental and other organizations working locally, in the current political process Parallel to obvious improvements in physical infrastructure and national symbols in areas under the Palestinian Authority's jurisdiction (Area "A"), the general continuity of human rights violations and the notable aggravation of some negative indicators provide some of the grounds for this perceived lack of confidence and despair.

78. While this report - as guided by the mandate - has dealt specifically with violations perpetrated by the Occupying Power, the Special Rapporteur would be remiss in his responsibility if he did not draw the attention of the Commission to the fact that since the

establishment of this mandate, a new situation has come into being in the mandated area and that new players have appeared on the same ground. These factors have created a new, more complex situation conducive to combined and mutually reinforcing violations that require attention and action. At the same time, the fact that the Special Rapporteur has access only to one party involved severely limits the possibility of drawing a complete picture of the situation, with the risk that the initiative adopted in 1993 may encounter the same limitation as has been the case with other initiatives that were relegated to a routine and limited role.

79. It will be for the Commission to consider if the mandate, as it stands, still fully serves the purpose for which it was originally conceived and whether it reflects a complete picture of the human rights situation in the occupied territories.

80. The Special Rapporteur has become acquainted with the important programme of assistance provided to the Palestinian Authority and Palestinian civil society by the Office of the High Commissioner for Human Rights. The international community should consider supporting this and other such practical action such as advisory services, training and human rights education, in order to advance international human rights and humanitarian law in the occupied Palestinian territories and the development of a culture of human rights.

81. A final consideration seems to be in order with reference to the fact that any agreement between the Occupying Power and a body representing the occupied civilian population is null and void if it violates the terms of the Fourth Geneva Convention. In other words, while protection of human rights and humanitarian law should never become an obstacle in the way of a peace process, an ultimate solution should not be achieved to the detriment of human rights. Indeed, respect for human rights and fundamental freedoms must be considered part and parcel of any viable peace process as they are a conditio sine qua non of any enduring peace.